

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILLIP D. MITCHELL,

Plaintiff,

v.

Case No. 17-13583

WARDEN CAMPBELL,

Defendant.

**OPINION AND ORDER DISMISSING MOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION AND DISMISSING THE
APPLICATION TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE**

Michigan prisoner Phillip D. Mitchell (“Mitchell”) filed a motion for a temporary restraining order and/or a preliminary injunction seeking to reinstate his access to the prison law library. (Dkt. #1.) He has also filed an application to proceed without prepayment of the filing fee. (Dkt. #2.) He names the prison warden as a defendant.

The Federal Rules of Civil Procedure provide that “[a] civil action is commenced by filing a complaint with the court.” Fed. R. Civ. P. 3. Prior to the filing of a complaint, “an action has not ‘commenced’ within the meaning of the Federal Rules” and the court lacks subject matter jurisdiction to grant relief against any named defendants. See, e.g., *Albright v. IS/S*, No. 15-10671, 2015 WL 12699371, at *1 (E.D. Mich. Mar. 25, 2015) (Levy, J.).

Mitchell has not filed a complaint with the court. Rather, he has filed a motion for injunctive relief under Federal Rule of Civil Procedure 65. That rule, however, merely provides for relief on an existing claim or cause of action. It does not provide an

independent cause of action or basis for jurisdiction in federal court. See *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982); *Chalmers v. JP Morgan Chase Bank NA*, No. 12-10903, 2012 WL 4839861, *7 (E.D. Mich. Oct. 11, 2012) (Hood, J.).

Consequently, the court lacks subject matter jurisdiction over this matter and it must be dismissed.

Having found that Mitchell's motion must be dismissed, the court will not reach the question of whether Mitchell should be able to proceed without prepayment of the filing fee. The court also concludes that an appeal from this order cannot be taken in good faith. See 28 U.S.C. § 1915(a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly,

IT IS ORDERED that Mitchell's motion for temporary restraining order and/or preliminary injunction (Dkt. #1) is DISMISSED WITHOUT PREJUDICE. Mitchell's application to proceed without prepayment of the filing fee (Dkt. #2) is DISMISSED WITHOUT PREJUDICE. This case is closed and will not be reopened.

IT IS SO ORDERED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 21, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, November 21, 2017, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6522